

British-Ukrainian Chamber of Commerce



Kyiv Branch

18/1 Prorizna Str., Office 7
Kyiv 01001, Ukraine
Tel.: (38044) 490 6000

Other Branches:

London
Lviv
Email: BUCCUkraine@bucc.com.ua

Mr. Alfred Praus
President
Ukrainian-Austrian Association
Kyiv 04080, Ukraine

9 July 2021

Ref: Request for the UAA to Join the BUCC for Judicial Reform Under Ukrainian Judicial Ombudsman Proposal

Dear Alfred,

You will please find attached the most recent article, published by the Atlantic Council, on the proposal by the British-Ukrainian Chamber of Commerce's ("BUCC") for a Ukrainian Judicial Ombudsman to solve the denial of justice problem in Ukrainian courts. There continue to be many abusive court judgments dispossessing foreign and Ukrainian investors without any genuine legal basis - which constitute under Ukraine's bilateral investment treaties ("BITS") a "denial of justice" (an especially egregious court decision was recently released by the Economic Court of the Cherkasy Region.) This is the principal judicial rule of law problem in Ukraine, for which the BITs have proved ineffective, because their arbitrations are too slow and expensive, by the time arbitral awards are rendered usually the assets in dispute are gone and Ukraine rarely pays such arbitral awards.

We would like to invite the Ukrainian-Austrian Association ("UAA") to join with the BUCC and over a dozen other chambers and business associations in our campaign for a Ukrainian Judicial Ombudsman to act as a prosecutor to review Ukrainian court judgments in response to complaints by litigants. This Judicial Ombudsman could then prosecute judges who render judgements that constitute denials of justice and who refuse to correct them in response to the opinions of the Ombudsman. As we previously discussed, we hope that you will support also making this an ICBAC reform initiative, and we have written to Emma, who is copied, on this.

Today in Ukraine, there is no effective independent oversight of the Ukrainian judiciary, even for criminal acts. Moreover, the Criminal Code of Ukraine (after Article 375 was voided by the Constitutional Court) fails to provide any appropriate standards for judicial conduct based on which judicial action can be properly reviewed. As for doctors, architects and other professions, there need to be enacted criminal law based standards for judicial behaviour to protect investors and the public generally. Judges should not be immune from legal recourse where they violate reasonable criminal law standards for judicial conduct. Under the proposal, judicial misconduct by rendering decisions that have no genuine legal basis, such as those used to improperly dispossess investors in raids, effectively judicial theft, would be criminalised.

Please note that the proposed Judicial Ombudsman is not to function as another court and thereby intervene in close cases, where there are reasonable arguments on both sides and judges take a decision. However, this is not the key rule of law problem for Ukraine, as most investors are legally well advised and comply with applicable law. The proposed Ombudsman is for clear abuses as reflected in judicial decisions. This proposal is in addition to, and should help, the law reform currently proposed by the US Embassy, EU Delegation to Ukraine and the ACC to improve the selection judges, as the judicial ombudsman will still be necessary to supervise judicial conduct, even if all of the current judges are replaced, to help keep the new judges honest.

Assuming we succeed, we hope that an ICBAC campaign can be created to attract new investment by promoting Ukraine as having adopted effective judicial reform.

Yours sincerely,

Bate C. Toms

cc: Ms. Emma Turos - General Secretary, ICBAC